

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 111 OF 1997

The State of Maharashtra
Appellant.
(Orig.complt.)
V/s

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....

1. Pyarelal Shridhar Keer,
 2. Ulhas Dattatray Khandare.
- 2.)

....

Respondents.
(Orig.Accd.Nos.1 &

Mr.A.M. Shringarpure, APP for the State.

Mrs.Daksha M. Shah, Adv. for the respondent No.2.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

9th August, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned Special Judge, Greater Bombay, in Sessions Case No.198 of 1994 on 13.8.1996 the State-appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Public Prosecutor for the State and the learned counsel appearing for respondents-original accused we have scrutinized the entire evidence on and reappraised the same.

3. The prosecution story stated briefly is that 17.8.1994 around 11.40 p.m. the police officers at Nirmal Nagar Police Station received information

that the accused persons with bags in their in hands are loitering the area of Golibar Chowk and their behaviour is suspicious. It was therefore decided on the basis of this information that the place where the accused were loitering should be raided. Accordingly panchas were called and they were asked to take search of the raiding party and then taken by the police to the place where the accused were standing. The accused persons were told of the identity of the police, were informed that they are liable to be searched and made them aware of their rights under the N.D.P.S. Act. Accused had no objection being searched by the police officers. Search accordingly was carried out and each of the accused was found in possession of Charas of about 2 Kgs. Accordingly panchnama was drawn, further investigation was conducted and the accused persons were prosecuted under the provisions of N.D.P.S Act.

4. The prosecution examined four witnesses to prove its case. The learned trial Judge on appreciation of evidence of these persons came to the conclusion that the prosecution has failed to prove the guilt of the accused persons and proceeded to acquit them as mentioned above. The appeal is directed against this acquittal.

5. The entire evidence on record consists of four witnesses. Out of them P.W.1-Bandu Bhosle and P.W.4-Jayantkumar Raut are the police witnesses and P.W.2-Mohamed Farooqui and P.W.3-Sunil Jadhav are the panch witnesses. The learned trial Judge has considered the evidence of these persons at length. The evidence of P.W.1-Bandu Bhosle Ex.7 is considered in para 5 of the judgment. P.W.1-Bandu Bhosle who is police official was

attached to Nirmal Nagar police station on 18.8.1994 and was functioning as detection officer when he received information regarding two persons loitering in suspicious circumstances near Golibar Chowk area of Mujaffar Chawl. He accordingly called the panchas and raided the place and found the accused in possession of charas.

6. P.W.2- Mohamed Farooqui is the panch who is examined at Ex.10 and has deposed to the manner in which the panchnama was made. To the same effect is the evidence of P.W.3-Sunil Jadhav and P.W.4-Jayantkumar Raut being the investigating officer.

7. The total appreciation of the evidence discloses several infirmities in the case of the prosecution. The learned trial Judge has noted these infirmities in para 20 of his judgment. Though it is the case of the prosecution that the accused persons were made aware of their rights under the N.D.P.S Act, factually there is no evidence on record that the police officers had given such understanding to the accused persons about their right of being searched in the presence of a Gazetted Officer. Though admonishing to this effect is mentioned in the panchnama neither the panchas nor the police officials deposed to that in the Court. It therefore creates grave doubt as to whether factually such communication was made or not. Apart from that the evidence of P.W.3-Sunil Jadhav lacks credibility. He has deposed that he does not recollect where he was required to sign, whether signatures were made on labels already written or whether signatures were obtained on blank paper or blank seals. There is no independent evidence at all. The prosecution has not explained as to why

the police were required to take panchas from the police station, why there was no witness available from the vicinity in which these accused persons were roaming and this fact creates further doubt as regards veracity of the prosecution.

8. Then the learned trial Judge has considered the question of compliance of section 50 of the N.D.P.S. Act and has found that there is no compliance of the provisions of section 50 of the said Act. We have again scrutinized evidence on record and we affirm the findings of the learned trial Judge that there is no evidence of compliance of section 50 of the N.D.P.S. Act. In such circumstances no fault can be found with the order of acquittal. The learned trial Judge has marshalled the facts correctly, has properly appreciated evidence on record, noted the lacunae in the case of having found that there is violation of section 50 and has thus proceeded to acquit the accused. In our opinion, this judgment does not require any interference. The learned trial Judge has properly appreciated the evidence and has given valid reasons for coming to the conclusion that the accused were not proved guilty. In the result therefore the appeal fails and is dismissed.